



GENERAL PUBLIC SERVICE
SECTOR BARGAINING COUNCIL



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RULING

Panellist/s: Mr Martin Sambo _____
Case No.: GPBC1988/2019 _____
Date of Ruling: 06 July 2021 _____

In the ARBITRATION between:

PSA obo P. MLANGENI

(Union / Applicant)

AND

DEPARTMENT OF JUSTICE AND CONSTITUTIONLA DEVELOPMENT

(Respondent)

Union/Applicant's representative: Ms Asnath Sedibane _____

Union/Applicant's address: PSA _____

Union Official _____

Telephone: _____

Telefax: _____

Respondent's representative: Mr Dan Silawule _____

Respondent's address: DOJCD _____

Telephone: _____

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RULING

This matter was scheduled for arbitration on 21 April 2021 at the Offices of the Department of Justice and Constitutional Development, Nedbank building, Brown Street in Nelspruit.

This matter relates to dismissal based on non-renewal of a fixed term contract. At the commencement of the sitting the Respondent raised a point in limine that the Applicant was not dismissed and that the Applicant cannot rely on the section 198(B)(3) in a dismissal dispute.

The parties then agreed to send written heads of arguments for me to decide whether the Applicant can rely on section 198(B) in this unfair dismissal dispute referred in terms of section 186(1)(b) LRA.

The question before me is "Can the Applicant rely on section 198(B) in an unfair dismissal dispute referred in terms of section 186(1)(b)?"

The essence of the Applicant's case is that the judge has indicated so in the Nama Khoi Local Municipality v SALGBC[2019] 8 BLLR 830 (LC) that section 198(B) may be part of an unfair dismissal enquiry. The Respondent on the other hand states that the Applicant does not provide evidence that the Department has contravened section 198(B) and that the Respondent has a valid reason for fixing the contracts. The Respondent further argue that section 198(B) cannot apply without taking section 198(D) into account, which deals with this disputes. The Respondent further argued that the Nama Koi matter and other cases referred to by the Applicant were irrelevant.

I have considered the submissions of the parties and the question before me is clearly whether the Applicant can rely on section 198(B) in an unfair dismissal dispute referred in terms of section 186(1)(b).

The principle in the Nama Koi matter is that an employee may challenge the dispute relating to section 198B by referring the dispute in terms of section 198D when the employee is still in the employ of the Respondent since he/she will be seeking a declaratory order. Such cannot be done once the employee's services are terminated. In that case an unfair dismissal dispute referral would be appropriate and section 198B may be part of that unfair dismissal enquiry.

It is therefore clear in this case that the Applicant has referred an unfair dismissal dispute in terms of section 186(1)(b) LRA and her seeking to rely on section 198B as part of that enquiry can be entertained.

RULING:

I therefore rule that the Applicant can use section 198B as part of her unfair dismissal dispute.

It is therefore the Commissioner's directive that this matter be rescheduled to deal with the merits of the case. Council is requested to schedule this matter on the 05 August 2021.

A handwritten signature in black ink, appearing to read 'M. Sambo', enclosed within a thin black rectangular border.

MARTIN SAMBO
PANELLIST
06 July 2021